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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,500	03/25/2004	Roy W. Mattson JR.	RM490	5718

7590 10/05/2005

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LONGMONT, CO 80501

EXAMINER
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PRINCE, FRED G

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/808,500

Applicant(s)

MATTSON ET AL.

Examiner

Fred Prince

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 0304, 0604, 0904.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 26-28 been renumbered as 26-29. Claim 27 is objected to because of the following informalities: It appears that claim 27 should depend from claim 26. Appropriate correction is required.

3. Claim 28 is objected to because of the following informalities: It appears that claim 28 should depend fro claim 26. Appropriate correction is required.

4. Claim 29 is objected to because of the following informalities: It appears that claim 28 should depend from claim 27. Appropriate correction is required.

### ***Information Disclosure Statement***

5. The information disclosure statements filed March 25, 2004 and June 25, 2004 fail to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed.

Applicant has not supplied a copy of the Japanese patents or German patent listed in this application. The IDS filed June 25, 2004 contains a reference to US Ser No 10/459,668. However, applicant has listed an inventor not of record in the above

application. Accordingly, applicant is requested to review the US Serial No. and provide matching data. The application referred to on the IDS has not been considered. The Information Disclosure Statements filed March 25, 2004 June 25, 2004 contains references to non-patent literature publications not provided, accordingly, the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 15-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 15 recites the limitation "the tub" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is suggested that applicant change the recitation to a whirlpool bathtub.

9. Claim 15 recites the limitation "the whirlpool bathtub" in line 9. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 15 recites the limitation "the water pump" in lines 9-10. There is insufficient antecedent basis for this limitation in the claim. It is suggested that applicant change the recitation to a water pump.

11. Claim 20 recites the limitation "the faceplate screen" in line 2. There is insufficient antecedent basis for this limitation in the claim.

12. Claim 23 recites the limitation "the tub" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is suggested that applicant change the recitation to a whirlpool bathtub.

13. Claim 23 recites the limitation "the whirlpool bathtub" in line 11. There is insufficient antecedent basis for this limitation in the claim.

14. Claim 23 recites the limitation "the water pump" in line 11. There is insufficient antecedent basis for this limitation in the claim. It is suggested that applicant change the recitation to a water pump.

15. Claim 26 recites the limitation "the tub" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is suggested that applicant change the recitation to a whirlpool bathtub.

16. Claim 26 recites the limitation "the whirlpool bathtub" in line 12. There is insufficient antecedent basis for this limitation in the claim.

17. Claim 26 recites the limitation "the water pump" in lines 12-13. There is insufficient antecedent basis for this limitation in the claim. It is suggested that applicant change the recitation to a water pump.

Claims 16-19, 21-22, 24-25, and 26-28 are rejected as depending from a rejected claim.

***Allowable Subject Matter***

18. Claims 15-28 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

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19. The following is a statement of reasons for the indication of allowable subject matter:

While it is known in the art to provide a housing assembly having a mounting surface for providing a flush mount to the inside surface of a whirlpool bathtub; said housing assembly having an input orifice and an output orifice, and a shape to enable drainage; said input orifice having a vertically oriented faceplate (see, for example, US Pat No 6,052,844 to Walsh) and it is known in the art to provide an ion generator releasing ions into a high velocity water stream in order to inhibit the growth of microorganisms (see, for example, US Pat No 4,048,032 to Eibl), in the examiner's opinion the prior art fails to teach or fairly suggest combining the known elements to arrive at the instantly claimed invention.

### ***Conclusion***


20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References are cited of interest to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (571) 272-1165. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Fred Prince  
Primary Examiner  
Art Unit 1724

fgp  
9/27/05